Written Testimony of Thomas A. Klee
Concerning

**Raised Bill No. 487, An Act Concerning the Unauthorized Practice of Law**

Submitted to the Judiciary Committee

March 26, 2010

Senator McDonald, Representative Lawlor and members of the Judiciary Committee, thank you for the opportunity to submit written remarks to the Committee to comment on Raised Bill No. 487, An Act Concerning the Unauthorized Practice of Law.

My name is Thomas Klee. I am an attorney in private practice in Bloomfield and Hartford where I focus on representing business organizations.

Raised Bill No. 487 would amend Section 51-88 dealing with the unauthorized practice of law. While I do not object to the intent of the Bill and many of its provisions, I do object to the effect of paragraph (e) thereof.

Generally, the Bill increases the penalty for those who engage in the unauthorized practice of law. To the extent that it does so with respect to persons who are not admitted as attorneys in any jurisdiction and take money from victims by purporting to be attorneys able to help the victims with their legal problems, the goal of the Bill is laudable. Nonetheless, it seems inconceivable to me that there are not currently criminal statutes on the books that could deal with these situations, such as fraud, taking making under false pretenses, impersonation, etc.

That said, the Bill in paragraphs (a) and (b) broadly defines the practice of law and permitted activities. Paragraph (c) prohibits anyone other than a person admitted

pursuant to Section 51-80, which allows for the admission of persons as attorneys in Connecticut, or providing legal services pursuant to a statute or rule of a court from practicing law in Connecticut and subjects those who do so to the civil and criminal penalties of Connecticut.

Paragraph (g) provides a criminal penalty of a Class C felony[1] for those who violate paragraph (c). Paragraph (e) contains an exception to paragraph (g) for those "authorized to practice law in another jurisdiction" by providing a penalty of a Class A misdemeanor[2] for a first offense and a Class C felony for each subsequent offense. It is this paragraph on which I wish to focus.

I start from the premise that the purpose of this statute should be to protect the citizens of Connecticut as consumers of legal services, not to protect Connecticut attorneys from out-of-state competition. To the extent that the Bill protects citizens from unscrupulous persons masquerading as attorneys, it serves this purpose. To the extent that it prohibits citizens from getting legal advice from the attorneys best able to help them, it does not.

Furthermore, I recognize that our system is based on admission to the practice of law on a state-by-state basis. Nevertheless, it is recognized that the practice of law often transcends state boundaries. Therefore, the Connecticut Supreme Court has adopted Rule 5.5 of the Rules of Practice dealing with the multi-jurisdictional practice of law. It is important to bear in mind that Rule 5.5 is not currently available to attorneys admitted in New York and about eight other jurisdictions because those states do not offer reciprocity

---

[1] A Class C felony provides a penalty of 1 to 10 years imprisonment and a fine of up to $10,000, or both.
[2] A Class A misdemeanor provides a penalty of up to one year imprisonment and a fine of up to $2,000, or both. This contrast with the current penalty in Section 51-88 of imprisonment of up to two months or a fine of up to $250, or both.

to Connecticut attorneys.[3] This is the rule despite the fact that the state in which the non-Connecticut attorney practices has nothing to do with his or her ability to serve the needs of Connecticut citizens.

Specifically with respect to paragraph (e), while initially it appears to lower the penalty for those "authorized to practice law in another jurisdiction,"[4] that is only for the first "offense." It makes clear the Bill's intention to cover persons authorized to practice law in another jurisdiction. What is not clear is what is an "offense". If a non-Connecticut attorney has a client in Connecticut, is it an offense each time he or she does any act in Connecticut which involves the practice of law, such as each meeting with a client? Or each time he or she sends a document to the client in Connecticut or each time he or she calls the client? This is not clear, but if each of these were deemed to be an offense, the felony penalty would be quickly applicable.

Consider the following hypothetical:

A Connecticut resident has an automobile accident in New York with a New York resident and hires a licensed New York attorney to bring suit in New York. If the New York attorney comes into Connecticut to meet with the client, is that a violation of the statute? If there is a second meeting in Connecticut, is that a second offense and thus a Class C felony?

Consider this additional hypothetical:

A licensed New York attorney comes into Connecticut with his New York client to negotiate and draft a transactional agreement with a Connecticut-based corporation,

---

[3] I am not aware of any other state's equivalent provision to Rule 5.5 that contains a similar reciprocity requirement.

[4] Contrast this general criterion with the much more specific criterion in paragraph (h), which would seem to be equally appropriate in this paragraph (e).

and also comes the next week to do more of same. Has the New York attorney violated the statute? Is this a second offense and thus a Class C felony?

There does not appear to be an exception for either of these set of facts, but it is unlikely that it is the intent of the Bill that the New York attorney be prosecuted in these circumstances. Moreover, it is a Connecticut person or business that is potentially harmed. In the former case, the accident victim is harmed by the inability to communicate with his attorney in Connecticut, when it may be much more convenient for the client. In the latter case, the ability of the Connecticut-based corporation to close the transaction may be impeded by the inability of the attorney for the other side to efficiently negotiate the transaction.

These examples could easily be revised to have application in many practice areas and in each case it could be a Connecticut citizen who is ultimately harmed.

Another factor to consider is implicit in the dual penalty structure of paragraph (e). The lesser penalty for a first offense recognizes the severe consequences of a felony charge against a attorney, no less a conviction. A mere charge is likely to materially impact the ability of the attorney to obtain and retain clients; a conviction is likely to lead to disbarment in the attorney's home state.

Additionally, this Bill could have an adverse affect on Connecticut attorneys. For example, if a Connecticut attorney wanted a New York attorney to come to Connecticut to work on a matter with him or her, would they have an obligation to warn the New York attorney of the possible adverse consequences? What if the Connecticut attorney invited the New York attorney to their office? Are they engaging in a conspiracy to violate this Bill or aiding or abetting them in doing so, thereby subjecting themselves to

criminal liability? These may be extreme results, but who can say they are impossible. In either case, the interests of Connecticut clients are potentially harmed.

For these reasons, I propose that paragraph (e) be revised to provide that an attorney who is duly licensed in another state either (i) not be subject to either a misdemeanor or felony penalty or (ii) be subject only to a misdemeanor penalty, as in the current statute. It should be emphasized that neither alternative would give free rein to an out-of-state attorney to practice in Connecticut. Paragraph (d) provides that any person who violates the statute is in contempt of court and is subject to the jurisdiction of the Superior Court upon an action brought by any Connecticut attorney, including the Chief Disciplinary Counsel. That appears to be an adequate remedy as the Superior Court judge could craft an appropriate remedy for the circumstances. Also, the Office of the Chief Disciplinary Counsel may refer the matter to the attorney's home state disciplinary body for appropriate action.

**I respectfully request that the Judiciary Committee not favorably report Bill No. 487 without making changes that address the issues raised in this testimony.**

Thank you again for the opportunity to submit written remarks to the Committee to comment on Bill 487.